


MEMORANDUM

Department of Environmental Quality
Division of Water Program Coordination
Office of Water Permit Programs

SUBJECT: Guidance Memo No. 00-2002
Permit Reapplication Requirements for Municipal Separate
Storm Sewer Systems

TO: Regional Directors

FROM: Larry G. Lawson, P.E. 

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This guidance outlines the permit reapplication requirements for currently permitted municipal separate storm sewer systems (MS4s).

The 1987 amendments to the Clean Water Act added Section 402(p) which directed EPA to establish regulations governing storm water discharges under the NPDES program. Early in the program, Congress specifically required NPDES permits for municipal separate storm sewer systems (MS4s) serving populations over 100,000. In response, EPA promulgated regulations in 1990 that established permit application requirements for MS4s that serve populations over 100,000. MS4 permits have since been drafted and finalized for eleven municipal systems in Virginia. These MS4 permits are due to expire and must be reissued.

EPA published the "Interpretative Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule" on 08/09/96 (61 FR 41698, copy attached). DEQ will use this policy as the basis for this guidance.

There are three components to EPA's reapplication policy. First, EPA is not requiring that the process used for part 1 and 2 of the initial permit application be repeated. Second, EPA has identified basic information that should be included in every reapplication package. Finally, EPA is seeking to improve existing MS4 storm water management programs by using information and experience municipalities have gained during the previous permit term.

Is a Permit Reapplication Necessary?

Yes. The requirement that all point source discharges authorized by a VPDES permit must reapply is established at 9 VAC 25-31-190(B) and 9 VAC 25-31-240(A):

Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

Duration of permits. VPDES permits shall be effective for a fixed term not to exceed 5 years.

The reapplication requirement is also found at 9 VAC 25-31-100(D):

Duty to reapply. . . All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires.

Therefore, all regulated Phase I MS4s need to participate in a permit reapplication process.

Are Initial MS4 Permit Application Requirements Applicable To Permit Reapplication?

No. The scope of the initial permit application requirements was comprehensive and regulated MS4s invested considerable resources to develop these applications. The initial applications have laid the foundation for the long-term implementation of MS4 storm water management programs. EPA believes reapplications should focus on maintenance and improvement of these programs.

The MS4 permit application requirements at 9 VAC 25-31-120(C)(1) and (2) apply to the first round permit applications required of large and medium MS4s. The permit application deadline regulations in 9 VAC 25-31-120(D)(3) and (4) clearly reflect the "one time" nature of the Part I & II application requirements for large and medium MS4s. EPA has not promulgated regulations applicable to reapplication for MS4s. Requirements to demonstrate adequate legal authority, perform source identification (e.g., identify major outfalls and facility inventory), characterize data, and develop a storm water management program should have been addressed in the initial application phase. Therefore, to request the same information again, where it has already been provided and has not changed, would be needlessly redundant. Thus, as a practical matter, most first-time permit application requirements are unnecessary for purposes of second round MS4 permit application.

What Basic Information Must Be Submitted for an MS4 Permit Reapplication?

The Regional Offices have the latitude to develop flexible reapplication requirements that are site-specific. In the absence of reapplication regulations specific to MS4s, minimum reapplication requirements are drawn from the generic VPDES permit application regulations at 9 VAC 25-31-100(F). The following basic information should be included as part of any MS4 permit reapplication:

- name and mailing address(es) of the permittee(s) that operate the MS4, and
- names and titles of the primary administrative and technical contacts for the municipal permittee(s).

In addition, in the reapplication, municipalities should identify any proposed changes or improvements to the storm water management program and monitoring activities for the upcoming five year term of the permit, if those proposed changes have not already been submitted as part of the required MS4 annual report. The Regional Offices should

make use of the fourth year annual report as the basic permit reapplication package.

Changes to the storm water management program may be justified due to the availability of new information on the relative magnitude of a problem or new data on water quality impacts of the storm water discharges. Municipalities may also propose to de-emphasize some program components and strengthen others, based on the experience gained under the first permit. Proposed elimination of a program component might be justified upon permit renewal; for example, when a component is no longer a problem area (i.e., all detention basins have been retrofitted) or when a different water quality program would serve the same goals.

The components of the original storm water management program which are found to be effective should be continued and made an ongoing part of the proposed new storm water management program. Such components may include:

- continued emphasis on public education programs, particularly programs on proper disposal of waste oil and household hazardous waste and pesticide application;
- continued, if not greater, emphasis on addressing impacts of new development/construction;
- proper storm design criteria for all new developments;
- retrofitting and/or upgrading of the existing storm sewer system according to a priority system;
- more frequent maintenance of storm sewer systems and storm water treatment systems;
- coordination with adjacent MS4s on monitoring or other efforts; and
- using a watershed approach to storm water management.

The accumulated annual report information should be evaluated and, to the extent applicable, be incorporated by reference into the reapplication package.

The Regional Office may request additional technical information be submitted by the MS4 to complete the permit reapplication on a case-by case basis, as appropriate.

What Additional Information Should Be Considered for a Reapplication?

The following information should also be provided to the Regional Office by the MS4 reapplicants:

- identification of any previously unidentified water bodies that receive discharges from the MS4, and
- a summary of any known water quality impacts on the newly identified receiving waters (based on best available data).

In addition, the following information should be provided to the Regional Office as well:

- a description of changes in co-applicants since issuance of initial MS4 permit, and
- identification number of the existing NPDES MS4 permit.

Further, the Regional Office should work with permittees to determine if storm water monitoring efforts are appropriate and useful. Reapplication is an appropriate time for MS4s to evaluate their monitoring program and propose changes to make the program more appropriate and useful. To accomplish this, municipalities may wish to consider using monitoring techniques other than end-of-the pipe chemical-specific monitoring, including habitat assessments, bioassessments and/or other biological methods.

The Regional Offices should incorporate any such new information, together with assembled materials from the initial application and the existing permit, to form the administrative record for any reissued MS4 permits. Such administrative records should be made publicly available as part of the process to reissue the permit.

If you have any questions regarding this guidance, please contact Burt Tuxford at 804/698-4086.

DISCLAIMER

This document provides procedural guidance to the permit staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.